[XXXVth YEAR.] THE [No. 1738.]

MARYLAND GAZETTE.

FRIDAY, MAY 5, 1780.

To the PUBLIC.

IT has been asserted, by the opposers of confiscation, that our legislature considered the *absentees*, as subjects of this state, and capable of holding property within it, by imposing on them the treble tax, and by laying them under disabilities, which would have been improper and unnecessary, if they are, or could be considered as subjects of Great-Britain, and aliens. Indeed a late scribbler, *the Detector*, has said, that the common law was superseded by the imposition of the treble tax. I will endeavour to examine this subject and the act of assembly, and flatter myself that I shall be able to convince every whig in the state (and it is only for whigs that I write) that the treble tax law does not allow the absentees *any* rights of subjects whatever; that it does not look upon the absentees, *even by implication*, as subjects of this state, either *before* or *after* the first day of September next; and that all the disabilities, which it hath imposed upon them, are founded upon the idea that they were actually, at the time of passing that law, *British subjects*.

By the act for the better security of the government, all persons not having signed the association, who fled from this state, since the fifteenth day of August, 1775, to avoid taking an active part in the defence thereof, and have crossed the seas, and who shall not return on or before the first day of September, 1779, and take the oath or affirmation by that act prescribed, within one month after their return to this state, shall be liable to the treble tax, and to the disabilities imposed by that act. THIS is the only clause which relates to the matter in question. To determine the true sense and interpretation of acts of assembly, it is a well known rule, "that we ought, 1. To examine what was the common law before the making the act. The mischief or defect for which the common law did not provide. 3. The remedy which the assembly hath appointed for that defect, and the true reason of the remedy; after which such a construction is to be made as will best redress the mischief and advance the remedy, according to the true intent of the makers of the act, and for the public good."

To examine the foregoing act by these rules I have asserted, and I hope satisfactorily proved, that all persons, who departed from this state, *before* or *upon* the formation of our government, remained British subjects, and became alien enemies to this state, and *as such*, while they *continued British subjects*, they were, by common law, independent of any act of assembly, incapacitated to hold any office or trust among us, to vote at any election, or to hold or inherit any real property; they were also, by common law, while they *continued* British subjects, and *during the war*, disabled from holding any personal property in this state, and from residing here, or practising any of the employments or professions, in that act enumerated. *Those* then were *not* the mischiefs and defects against which that act was intended to provide; it was *not designed* to *prevent* the absentees from holding offices of profit or trust among us, or voting at our elections *while* they *continued* British subjects; it was not intended to prevent them from holding property in this state, liable to only a single taxation, or from exercising among us the employments and professions therein specified, *while* they *continued* British subjects and during the war; *all these things* the *common law* had effectually prevented and guarded against.

What then were the mischiefs and defects against which the assembly meant to provide? A few considerations will enable us to discover them. Keeping in view the nature of the present revolution, the principles upon which we had acted, and the conduct we had adopted; it was thought probable that many of the inhabitants of Great-Britain might be induced, from time to time, to *withdraw* from *that kingdom*, remove themselves to *this state*, and *bind* themselves under *allegiance* to our government, by taking the oath or affirmation prescribed for that purpose, which conduct was, at that time, and now is, considered all that was necessary to *divest* such persons of their *subjection* to Great-Britain, to *render* them *subjects* of this state, and *thenceforth* to entitle them to all the privileges of that relation. It was thought not improbable, that *many of those absentees*, whom cowardice or disaffection had removed from hence to Britain, *after* the war was at an end, when the *danger was past*, or when they had found all *their attempts* to enslave us vain, and ineffectual, prompted by interest, might be induced to *disturb* the *British* government, and *become subjects* to the government of *this state*. It was thought reasonable to make some *distinction* between *those subjects* of Great-Britain who, being in America, had turned their backs upon us; who had refused uniting in our opposition to British oppression, and made it their deliberate choice to continue under its dominion; and *such* of the *subjects* of that kingdom, who might be supposed to have remained under its subjection, more from the *peculiar circumstances* of their *residence* than form *choice*, and who, had they been in America, it might charitably be presumed, would not have forsaken us; that is, between the *absentees* and the *other* British subjects.

The legislature *also* reflected that, *after* the expiration of the war, the subjects of Great-Britain, as well *absentees* as *others*, might *without* renouncing their subjection to that kingdom, come into this state and reside here as *alien friends*, during the time of peace, acquire *personal* property, and exercise their different professions and employments among us. Exasperated most justly at the conduct of *the absentees*, who were considered as a *principal cause* of our calamities, they thought it highly reasonable to impose certain disabilities upon them, as a mark of their just displeasure and abhorrence. To *make a distinction* between the *absentees* and the *other* British subjects; to place the *first* under greater hardships and disadvantages than the *last*, is the *real, legal operation*, of that clause of the act of assembly, and this is the true key to its interpretation.

Let us now see in *what manner* this distinction is made, and what disadvantages are imposed upon those objects of just indignation and resentment. All *other* subjects of Great Britain remain at free liberty to renounce their arbitrary government, and take the oath of allegiance to this state whenever they shall think proper, upon which we embrace them as subjects, and *from that time* admit them to a full participation of all the privileges of that relation: but to the *absentees* we have said, "if *you* would wish for a *full* participation of those privileges, you must *renounce* your *subjection* to Great-*Britain*, and return to this state *on or before* the first day of September, 1779, and *within one month* after your return *become* a *subject* of our *government*, by taking the oath of allegiance and abjuration; after that period is elapsed, however desirous you may be to *become* a subject of this state, we will not receive you upon any other conditions, than that of your being liable to the following disabilities: 1. You shall be incapable to hold or exercise any office of profit or trust civil or military. 2. You shall not be permitted to vote at any election. 3. You shall be disabled from practising law, physic, &c. from preaching the gospel, &c. 4. And *all* the property which you shall acquire, after you have thus become a subject of the state (for after that time you will be entitled to acquire and to hold property among us) shall be subject to a treble tax." Such is the distinction made by this act between *absentees*, and *other* British subjects, with regard to the *terms* on which we will admit them to *become subjects* of *this state*, when they shall think proper to *renounce* their *present subjection* to *Britain*.

But suppose the war at an end, and peace established between Britain and America, the British subjects *in general*, without divesting themselves of their subjection to that kingdom, as *alien friends*, might, during the peace, consistent with the principles of common law, reside among us, acquire *personal* property, and follow their different professions for a livelihood; but with respect to *absentees*, that clause of the act of assembly, controuling the common law, hath declared to them, that although we will permit *them also* to come among us as alien friends, yet in *their case*, as a punishment for deserting us in our day of distress, they shall be *distinguished* from the *rest* of the British subjects, by having that property, which they may *acquire* during such *future* residence amongst us, on which they may bring with them, subjected to a treble tax; and by being disabled from practising any of the enumerated professions or employments.

This is the *legal* exposition and construction of that clause of the act of assembly; it is the *only* construction which can be given to it, consistent with the true intent of the legislature, and the public good. The legislature most certainly had in view to lay the absentees under disabilities and disadvantages *greater* than those to which they were liable by the common law; they had not the most distant idea of bestowing upon them *privileges*, of which they were *before deprived*, or by that act to *alter* the common law in *their favour*.

All those persons, who, from their *tender regard* for the interest of the *absentees*, have become such violent opposers to the seizure of British property, will examine the act of assembly with a little more attention, they will find, that it is worded with peculiar caution. The absentees are not in any part called by the *name* of subjects, nor does it appear *even by implication* that the framers of that bill considered them as such. That act of assembly did not propose to allow the absentees the rights of subjects, from the passing that act, until the first of September, 1779, *unless* they *renounced* their *subjection* to the *British government* before that day, and *make* themselves *subjects* of *this state*, by taking the oath prescribed for that purpose; and upon the *same* terms every *other* British subject is allowed the *same* rights, with only this difference, that the *absentees* were *limited* to the first of September, 1779, within which time they were required to make the *renunciation*, and the *other subjects* of Great-Britain *are not restrained* to any time; but with respect *both* to the *absentees* and the *other* British subjects, it was *absolutely requisite* that they should make this renunciation of their old government, and take the oath of allegiance to this state, *before* they should be considered as *subjects of this state*, and *before* they should be allowed *any* of the *rights* of subjects; and it would be *only* from *thenceforward* that they would be *entitled* to those rights. There is not a word in that act which admits either *expressly*, or by *necessary* implication, that the *absentees* continued to have any right to the property, which they had formerly owned in this state, before the formation of our new government. The framers of that act have not *said* nor can it be *presumed* to have been their meaning, that the treble tax should operate upon any property in the state, to which the absentees had a right *at the time* of passing the law, for by the common law (as has already been unanswerably proved) they were not at that time entitled to hold property in Maryland, but the right of that which they once owned was vested in the state; but they well knew that the absentees, in the same manner as the other British subjects, and the subjects of other nations, might even *after* the first day of September last, *become subjects* of this state, or in time of peace they might return here, and reside among us as *alien friends*. If the absentees *became* subjects, they might *from that time forward* acquire property both *real* and *personal*; if they resided among us, as alien friends, they might even then acquire *personal* property. It is *that property* which they should acquire *after* they returned to reside here, or which they should bring with them, upon which the act of assembly operates, and which it renders liable to the treble tax. The disabilities to which the absentees are subjected, were not imposed, upon the supposition that they were subjects of this state, but clearly on the principle that they were subjects of Great-Britain, and entirely relate, either to the terms on which they should be *permitted* to *become* subjects of this state, on their abjuration of the British government, of which they were then members; or to the terms on which they should, in time of peace, be permitted as alien friends to reside among us, and acquire property.

That the *true* construction and *legal* operation of that clause of the act of assembly has been misunderstood by many, I have no doubt, nor is it to be wondered at, considering the novelty of the case, and how few are led in their literary

purſuits to thoſe reſearches *neceſſary* fully to comprehend it. It is highly probable there might be members of both houſes of our legiſlature, who conſidered it in a different point of view; we well know that bills are framed by a few individuals, who underſtand their *legal* operation, while many who vote for their paſſage have neither the leiſure or the knowledge requiſite to examine into their meaning or effect.

I have no fear of being refuted when I declare that the *legal operation* of that clauſe of the act of aſſembly is agreeable to the *expoſition* which I have given to it; and if the legiſlature had any *other* intention; if *they ſuppoſed* it would *operate differently*, it muſt have proceeded from *inattention* to the principles of the law of nations, and the common law, and from *not conſidering* what alterations were made, according to thoſe principles, with reſpect to individuals, and their property, by the declaration of independence, and the formation of our new government, and what rights, by thoſe events, were given to the public, or taken away from private perſons. I am inclined to believe, that the conſtruction I have given the act is ſuch as the *framers* of it, at leaſt, deſigned it ſhould have, and, if it has generally been conſidered in a different light, that it has been, in a great meaſure, owing to the *artifices* of our *enemies*, and to the *arts* of the *friends*, the *connexions*, and the *favourers* of the *abſentees*, who wiſhed ſuch a conſtruction ſhould be given to the law as might, *if poſſible*, ſecure their property to its former owners, and prevent its being appropriated to the uſe of the ſtate; the very purpoſe they are endeavouring to effect by a different expoſition.

AN INDEPENDENT WHIG.

Baltimore-town, May 1.

To the PRINTER.

SIR,

OUR affairs are now arrived at ſuch a critical ſtate, that every ſerious, thinking man muſt be alarmed for the conſequences. Public virtue, public ſpirit, national pride, reſpect for our councils, *legiſlators* *, and officers, are almoſt totally extinct. Union, which is now ſo neceſſary, and which ſhould be the object of every one, who is not entirely loſt to a ſenſe of ſocial duty, is deſtroyed by the fly artifices of crafty, deſigning men, or by the more open efforts of daring, hardy adventurers. Our moſt *worthy* characters are traduced in the public papers, nay the pernicious ſpirit of abuſe and ridicule hath become ſo prevalent, that the very dog-kennel † is infected with it. Mr. Printer, this is a matter of ſerious concern to the good people of this ſtate; if ſome very efficacious means are not ſpeedily taken to diſpel this virulent humour, I dread the fatal effects of it. Let us for a moment reflect on our diſaſtrous ſituation, if we are deprived, by theſe practices, of the aſſiſtance, and direction of our moſt able, and firm patriots; thoſe men who ſet out with ſuch an *active, determined* ſpirit, and continued with ſuch *unſhaken* uniformity, in the glorious cauſe of freedom, and their country. We have too much reaſon to believe that this will be our fate, if ſome effectual remedy againſt the crying evils of ſcandal and defamation, be not quickly applied. Whilſt the Independent Whig, Cenſor, &c. are allowed to diſperſe their deſtructive principles, and calumnies through the land, what reaſonable hope can we have of united exertions, and conſequently of a ſucceſsful iſſue to our endeavours? It is then the duty of every good whig to exert himſelf againſt theſe diſturbers of the public tranquility, that the *fame* of our great men, like their *virtues*, may be without ſtain, and that their country may reap the glorious advantages, that muſt neceſſarily reſult from their invaluable ſervices.

SINCERUS,

Head of Magothy, April 30, 1780.

* *A ſtrong inſtance of the truth of this remark is exhibited in note to a publication in your laſt paper, under the title of An Independent Whig. The particulars of it I need not repeat, as I make no doubt, it did not eſcape the notice and* indignation *of any perſon who has the leaſt ſenſe of decency and decorum.*

† *Vid. Old Portius. Quære, is it not contrary to the ſpirit of our conſtitution and form of government that dogs ſhould intermeddle in ſtate affairs. If ſo, a queſtion will ariſe how they are to be treated if detected in practices of this kind; whether as ſpies, and puniſhed accordingly, or merely as* aliens. *But as the wiſeſt heads in the land, ſeem to be under inſurmountable difficulties in determining the preciſe idea and extent of this laſt article, it is probable their property in this inſtance, would eſcape the effects of confiſcation; and their perſons, though they would not ſtrictly come under the title of* ſubjects, *might with ſingular propriety be admitted under that of* quaſi ſubjects, *which in law has the ſame effect.*

Mr. GREEN,

THE gentlemen, whom Mr. Finis thought proper to attack, in your paper, have treated him with the contempt he deſerves; they have given him an adverſary from the kennel; but I am vexed to ſee the air of importance which the pitiful hound aſſumes, upon this fancied mark of diſtinction; he has taken the ſignature of Old Portius, and would thereby inſinuate that he is chief of the pack. I beg that no two-legged animal will be impoſed on by his babbling; he is nothing better than a puppy, and, ſo far from following his own noſe, that in the chace only barks to the cry of greater puppies than himſelf; he conſtantly ſtrays from the kennel; and indeed it is impoſſible to confine him; for he will gnaw through cords, pales, and doors, to get free; and the principal uſe he makes of his liberty is to annoy paſſengers. Almoſt every our can diſtinguiſh between a *gentleman* and a *dirty fellow*; but this dog, who pretends to be of ſuperior kind, ſnaps at the heels of every one, who will not condeſcend to ſtroke him. After all, I will not deny that he has tolerable natural parts; but from the inſtant he received his ſight, he has been ſo violently addicted to curriſh tricks, that I abſolutely deſpair of his amendment. In ſhort, it is the ſincere wiſh of every ſober, judicious member of the pack, to have him diſmiſſed from the ſociety.

You may poſſibly conclude, Mr. Green, that malice has inſtigated me to give an unfavourable character of a brother member; if he perſiſts in babbling, I will convince you, in my next addreſs, that this is too lenient a correction.

JOWLER.

From the kennel, May 2, 1780.

LONDON, *Dec.* 30.

LETTERS from France mention the arrival of monſieur Gerard (who has been ſucceeded in his embaſſy by the chevalier le Luzerne, and of Mr. Jay, with his ſecretary, Mr. Carmichael, appointed to the court of Spain. They ſailed from Philadelphia in the Confederacy American frigate, the firſt of October; and a day or two after their ſailing, Mr. John Adams was appointed, by congreſs, a ſole commiſſioner to Europe, to treat for, or to receive terms of peace; Mr. Francis Deane is his ſecretary, and they are to reſide at Paris, in order to be near the place of any future negociations for peace among the belligerent powers. They ſailed from Boſton in a French frigate of 40 guns, and are ſaid to be arrived at l'Orient.

Feb. 5. Government are certainly of opinion, that Gibraltar has not been ſuccoured without a previous bruſh with the Ferrol ſquadron.

Yeſterday it was reported in the city, that government had received certain advice, that the Spaniſh ſhips which were captured by admiral Rodney, were taken by a fleet of French frigates and carried into Breſt.

ANNAPOLIS, *May* 5.

Captain M'Clenaghan, arrived in Philadelphia from St. Euſtatia, confirms the arrival of 16 ſhips of the line and 12,000 troops at Martinico from old France.

*** *The printers are under the neceſſity of informing their cuſtomers, that the uncertain value of the paper currency obliges them to demand, 12/6 hard money the year, or paper at the exchange; thoſe perſons, therefore, who do not think proper to continue ſubſcribers, will give them early notice.*

Charles county, April 17, 1780.

I HAVE in my cuſtody, committed as a runaway, a negro man who calls himſelf Dover, and ſays he belongs to Mr. James Lloyd on James river; he ſays he is about twenty-three years of age, he is a middle ſized fellow, remarkably black, and ſpeaks good Engliſh: had on, when delivered to me, a ſtriped country cloth jacket and breeches, country linen ſhirt, one pair white yarn hoſe, and one pair blackiſh coloured mixed yarn ditto, a pair of old ſhoes and an old country cotton cap. His maſter is deſired to pay charges and take him away.

1 BENJAMIN CAWOOD, ſheriff.

St. Mary's county, April 21, 178[illegible]

COMMITTED to my cuſtody as a [illegible] way, a mulatto man by the [illegible] appears to be about twenty-five years [illegible] feet ſix inches high. He ſaith he [illegible] to pay charges and take him away.

[illegible]

Saint Mary's county, April [illegible]

A PETITION will be offered to the [illegible] ſeſſion of aſſembly after this notice has [illegible] publiſhed eight weeks, for an act to [illegible] recording and to give effect from the [illegible] deed executed in this county, by Phil[illegible] and Anne his wife, to George Medley, [illegible] tract of land lying in Medley's Neck, [illegible] county aforeſaid.

2 w8 GEORGE MEDLEY

A PETITION will be offered to the [illegible] ſeſſion of the general aſſembly [illegible] notice ſhall have been publiſhed eight [illegible] an act to empower the ſubſcriber (now [illegible] to make a good and ſufficient deed of conveyance, for certain tracts of land lying in Charles county, which he inclines to make ſale of.

7 3w HARRISON MUSGRAVE

Somerſet county, April 4, 178[illegible]

NOTICE is hereby given, that I intend to petition the next general aſſembly for a road to lead from the main road leading to Princeſs-Anne to the lower ferry, to the plantation whereon David Megrath formerly lived, and now in the poſſeſſion of

5 3w MARY WAGGAMAN

Annapolis, March 30, 178[illegible]

THE COMMITTEE of GRIEVANCES and COURTS of JUSTICE will ſit to do buſineſs in the committee room, every day, from eleven in the forenoon till four in the afternoon, during the preſent ſeſſion of the general aſſembly.

Signed by order of the committee,

6 A. GOLDER, clk. com.

Prince-George's county, St. Paul's parish, March 30, 178[illegible]

WANTED a clergyman of the church of England. Any gentleman who will ſupply and approved by the veſtry, they will engage to give annually twenty thouſand pounds of tobacco, and the uſe of a ſmall glebe.

Signed per order,

4 LEONARD WARING, regiſter.

THERE is at the plantation of Stephen Rawlings, taken up as a ſtray, a [illegible] bay mare, about ſeven years old, is [illegible] docked, nor has any perceptable brand or mark, about 13 hands high. The owner may have her again on proving property and paying charges.

3 X w3

April 18, 178[illegible]

TAKEN up adrift, laſt Eaſter, in Sou[illegible] river, a large pine canoe, 27 feet long, 2½ feet in the clear, with 4 row-locks, and a large locker in her ſtern; ſhe has been cracked, and has eight knees in her ſides and one in her head, with a rope painter. The owner may have her again on proving his property and paying charges.

3 X FRANCIS WAYMAN.

LEONIDAS,

A moſt beautiful blood bay, full fifteen and a half hands high, of a remarkable ſtout and handſome form,

WILL ſtand the enſuing ſeaſon at Abingdon, near Alexandria in Virginia, and will cover mares at four pounds Virginia currency the ſeaſon, to be paid in ſpecie, or four hundred weight of tobacco, or an equivolent either in continental currency. The money expected when the mares are brought to the horſe, otherwiſe they will not be covered.

Leonidas is ſix years old this graſs, in perfect health, and has never received the ſmalleſt injury. He was got by colonel Lloyd's Traveller, who was got by Morton's Traveller, his dam the thorough bred imported mare Jenny Cameron. Leonidas's dam was got by Morton's Traveller, his grand dam Selima by the Godolphin Arabian.

Good paſturage will be found only for thoſe mares which may come from a diſtance, and particular care taken of them, but will not be anſwerable for eſcapes.

2 I. P. CUSTIS.

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